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Lesson 4

On Trial—Juvenile or Adult?

Objectives

- To identify the reasons for juveniles to be tried as adults
- To examine the pros and cons of trying and punishing juveniles as adults
- To explore which factors determine if a juvenile goes to adult court

Teacher Notes

In this lesson, students examine the national trend toward harsher punishments for juveniles who break the law. Because of the rise in juvenile crime and the seeming failure of the juvenile system to bring about improved behavior in its juvenile clients, many states have legislated harsher penalties for convicted juveniles, moving away from the notion that juveniles can be rehabilitated. Before beginning this lesson, find out the ages at which juveniles can be tried as adults in your state and what the state policy is concerning the death penalty.

Students examine the issue of trying juveniles in adult courts and evaluate the harsher punishments proposed by some states. They simulate a waiver, or transfer, hearing using a case study. Time should be allowed for a thorough analysis of this activity. Students follow up the simulation with a short paper.

Procedure

1. Ask students if they know the age at which a suspected criminal is tried as an adult in their state. When should someone be viewed as an adult in the eyes of the law? Under what circumstances should juveniles be considered adults? List students' opinions on the board and allow time for discussion.
2. Distribute **Handout 6** and have students read part A. Divide the class into groups of three and direct students to complete part B as a group. Discuss answers to part B as a class.
3. Distribute **Handouts 7** and **8**. Have the same small groups analyze the information on the handouts. Reconvene the class for a class discussion. Point out the great variety among the states regarding the ages for juveniles being tried as adults. Ask students why this is the case. Tell students to pay close attention to the statistics for the death penalty and the decisions of individual state supreme courts. Ask students how they feel about juveniles receiving the death penalty.
4. Ask students to reexamine their original answers to the question of age for a juvenile being tried as an adult (procedure 1). Ask students if they changed their minds and why.
5. Distribute **Handout 9**. Have the same small groups read the handout. Tell each group that it will conduct a waiver, or transfer, hearing to determine if Jerry and/or Josh should be tried as adults or kept within the juvenile system. In each group, one student will act as the juvenile court judge, one as the prosecutor, and one as the defense attorney. Ask students to prepare their arguments. Allow each group about fifteen minutes to come to a conclusion, giving each participant about five minutes to be heard. The prosecutor should go first. Ask the judge in each group to explain to the entire class the reasons for his or her decision.
6. Tally the decisions from the various groups along with the judges' rationales. Ask students what trends they discovered. Did their findings reflect any of the data on the handouts? How do they feel about the death penalty? Do they think that either or both of the boys deserve the death penalty? Have students explain their viewpoints.

7. Assign a short paper on one of the following questions:

- Should juveniles be tried as adults?
- Should juveniles who commit murder receive the death penalty?

Have students present their papers orally and answer questions from the class after their presentations. Allow plenty of time for discussion.

Enrichment/Extension

1. Do intensive research on your state's laws concerning trying juveniles in the adult courts. Write a research paper or an opinion paper on the topic and share your conclusions with the class.
2. Write to a lawyer or judge from juvenile court. Question him or her about juvenile courts and the death penalty. Ask follow-up questions and write a summary of the answers you receive. Post your correspondence and summary on the bulletin board.

Who Gets the Case?

Part A.

Read the following information.

There is much controversy today about where juveniles should be tried. Should they be considered adults or children? At what age should they be considered adults? How is that age determined? Who should make that determination?

State legislatures make the laws that determine when a child can be considered an adult and tried that way. The state laws vary as to the age that a child is fully aware of what is involved in committing a criminal act and what consequences are involved as a result of that wrongdoing.

Until relatively recently, juveniles were commonly taken to juvenile courts and placed in juvenile halls, foster homes, group homes, camps, and state correctional facilities or were placed on probation at home. The widely-held theory was that youngsters should be given a chance to be rehabilitated through various means. In the 1970s and 1980s, juvenile courts began to be viewed differently across the country as juvenile crime began to rise.

Public opinion changed when juveniles began committing more crimes. People decided that harsher punishments should be given to juveniles. To accomplish this, juveniles who committed felonies were taken to the adult court system and treated as adults.

Many people who support juvenile courts as a means of rehabilitation argue that putting juveniles into adult prisons endangers their lives. Juveniles in adult prisons are not always kept away from the general adult prison population and are frequently abused and injured. Generally, however, these juvenile advocates have been ignored and the number of juveniles who are transferred, or waived, into the adult court system from the juvenile courts has increased.

Sometimes juveniles are judged to be delinquent in the juvenile system and then are tried in the adult system. This practice appears to violate constitutional guarantees against double jeopardy. The United States Supreme Court clarified the process for placing a case into the adult system with *Breed v. Jones* (1975).¹ In the case, the United States Supreme Court decided that a youth cannot be judged to be delinquent in a juvenile court and then transferred, or waived, to an adult court. The case started in California, where a boy was waived into the adult court system for trial after a court had decided that he was a delinquent. It was argued that this was in violation of the Fifth Amendment, which protects citizens from being tried twice for the same crime (double jeopardy).

Juvenile courts now hold a waiver, or transfer, hearing. This hearing is similar to the preliminary hearing in an adult court. A judge determines whether a youth is kept in the juvenile system or is moved into the adult court. A case will be moved into the adult court if there is probable cause that the youth committed the offense and it appears that the youth will not be helped through the juvenile system and/or is a threat to society. Often this applies to people who have been in and out of the system frequently and who have derived no benefit from juvenile programs. Sometimes an offender's age may convince the court that there are no juvenile programs available to improve his or her behavior.

¹John T. Whitehead and Steven P. Lab, *Juvenile Justice: An Introduction* (Cincinnati: Anderson Publishing, 1990), 281.

Juveniles Tried as Adults

Analyze the chart below and prepare to discuss states' rationales for trying juveniles as adults.

Minimum Age Juveniles Can Be Tried as Adults in the U.S.			
State	Age	State	Age
Alabama	14	Montana	16
Alaska	none	Nebraska	none
Arizona	none	Nevada	16
Arkansas	15	New Hampshire	none
California	16	New Jersey	14
Colorado	14	New Mexico	15
Connecticut	14	New York	14
Delaware	14	North Carolina	14
District of Columbia	15	North Dakota	16
Florida	none	Ohio	15
Georgia	13	Oklahoma	none
Hawaii	16	Oregon	16
Idaho	15	Pennsylvania	14
Illinois	13	Rhode Island	16
Indiana	16	South Carolina	none
Iowa	14	South Dakota	10
Kansas	16	Tennessee	15
Kentucky	16	Texas	15
Louisiana	16	Utah	14
Maine	none	Vermont	10
Maryland	15	Virginia	15
Massachusetts	14	Washington	none
Michigan	15	West Virginia	none
Minnesota	15	Wisconsin	16
Mississippi	13	Wyoming	none
Missouri	14		

Fig. 4.1.

Fig. 4.1. Whitehead and Lab, *Juvenile Justice*, 9.

Juveniles and the Death Penalty

Examine the following items and prepare to discuss the execution of juveniles for adult crimes.

Graph A.

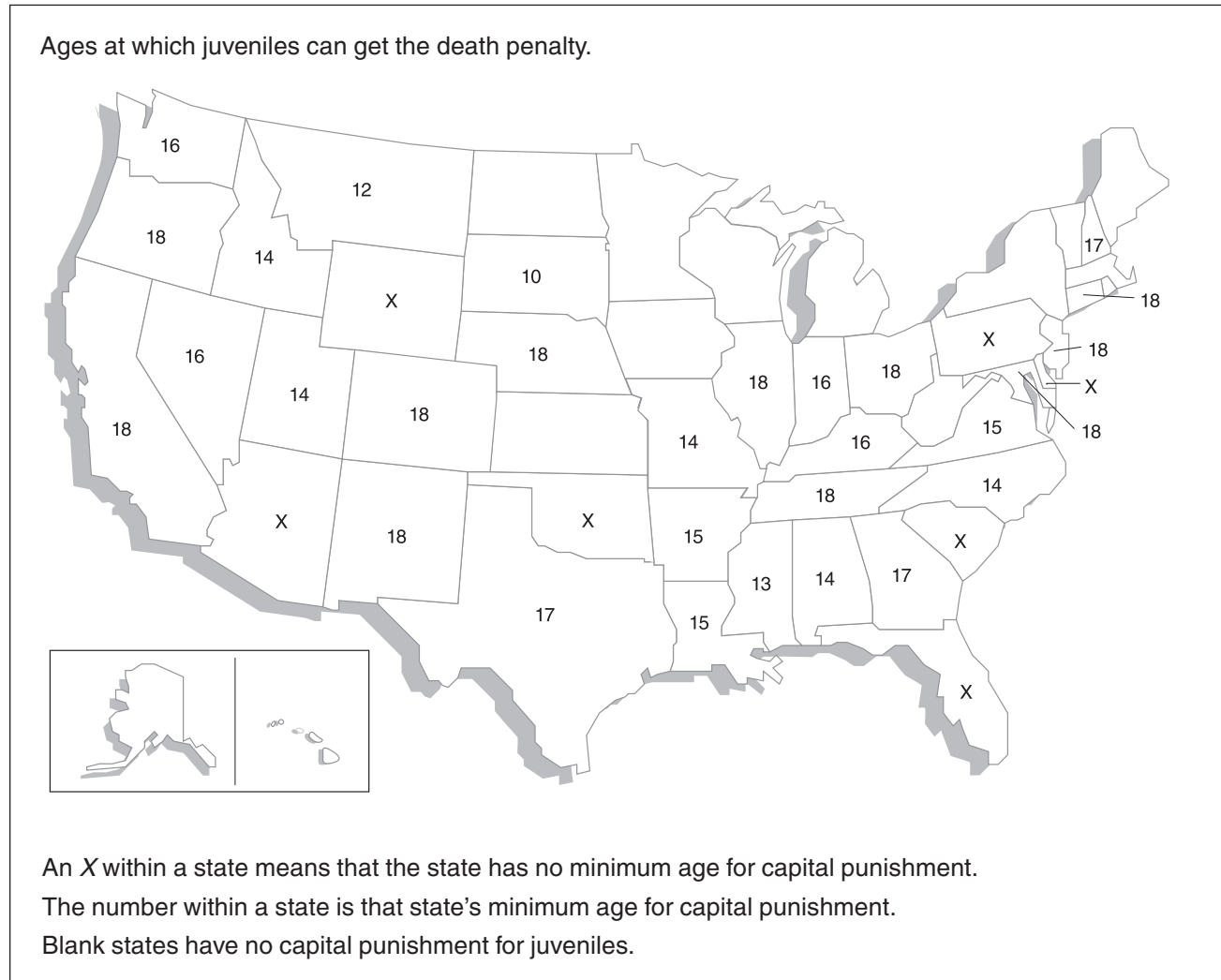


Fig. 4.2.

Fig. 4.2. *Youth Violence*, Bruno Leone, ed. (San Diego: Greenhaven Press, Inc., 1992), 210.

Graph B.

Judicially waived cases generally involve older males.

	Percent of waived cases				
	1988	1989	1990	1991	1992
Age at Referral					
15 or younger	7%	11%	10%	9%	12%
16 or older	93	89	90	91	88
Sex					
Male	96%	95%	96%	96%	96%
Female	4	5	4	4	4
Race					
White	54%	49%	45%	46%	47%
African American	43	49	52	52	50
Other	2	2	3	2	3

Note: Detail may not total 100% because of rounding.
 Source: Butts, J., et al. (1995). *Juvenile court statistics 1992*.

Fig. 4.3.

Graph C.

There has been a substantial increase in waived cases. Between 1988 and 1992, the number of cases judicially waived to criminal court increased 68%.

Most serious offense	Number of waived cases		Percent change
	1988	1992	
Delinquency	7,000	11,700	68%
Person	2,000	4,000	101
Property	3,700	5,200	42
Drugs	700	1,400	91
Public order	500	1,000	90

Note: Detail may not add to totals because of rounding. Percent change was calculated using unrounded numbers.
 Source: Butts, J., et al. (1995). *Juvenile court statistics 1992*.

Fig. 4.4.

Fig. 4.3. Howard Snyder, Melissa Sickmund, and Eileen Poe-Yamagata, *Juvenile Offenders and Victims: 1996 Update on Violence—Statistics Summary* (Pittsburgh, Pa.: National Center for Juvenile Justice, 1996), 154.

Fig. 4.4. *Ibid.*, 154.

Graph D.

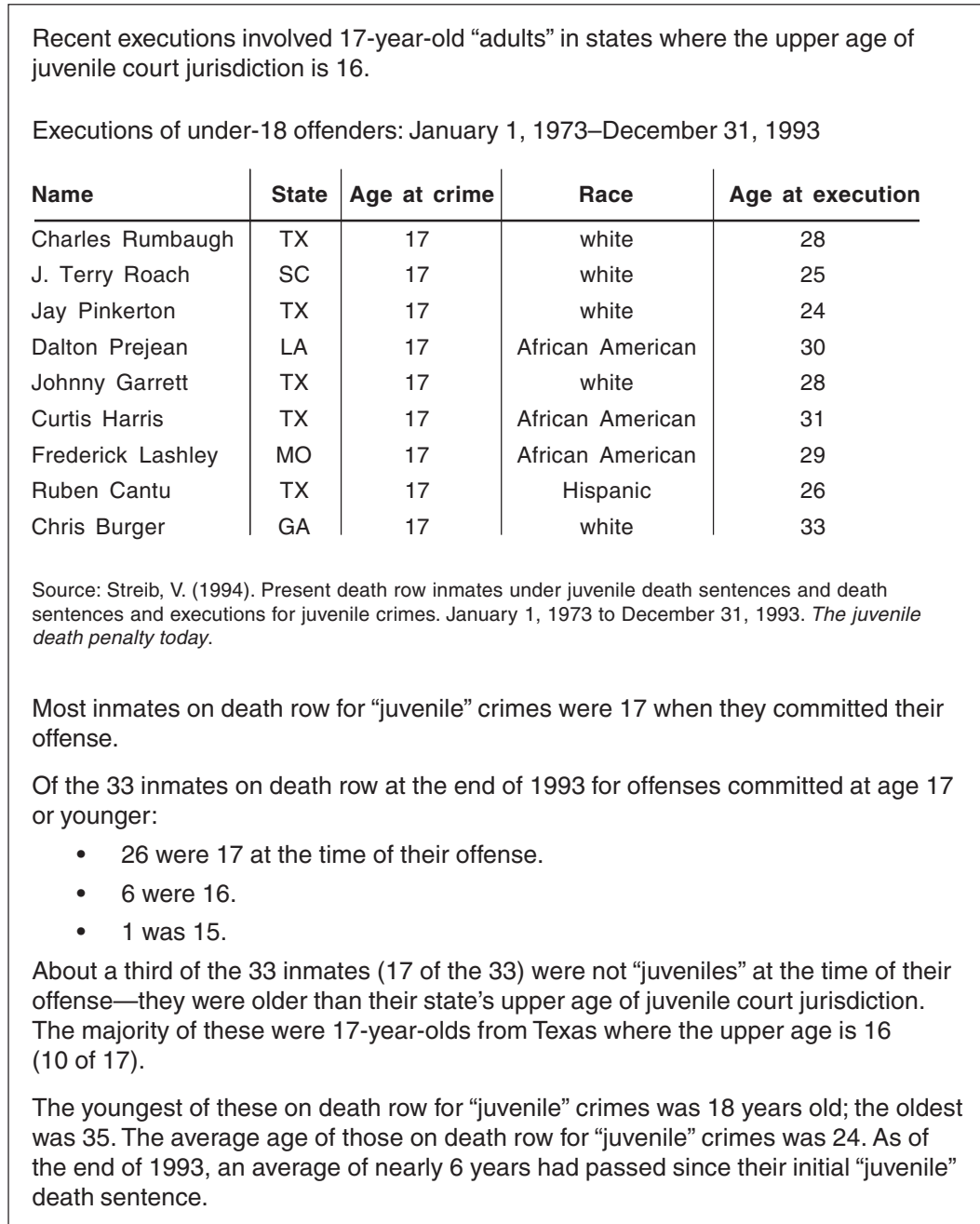


Fig. 4.5.

Fig. 4.5. Snyder, Sickmund, and Poe-Yamagata, *Juvenile Offenders and Victims*, 180.

Imposition of the death penalty for juvenile crimes is rare

Supreme Court decisions set the minimum age for receiving the death penalty at 16

The Supreme Court, in *Eddings v. Oklahoma* (1982), held that just as the background and mental and emotional development of a youthful defendant should be considered in sentencing, so should a defendant's young age be considered a mitigating factor of great weight in deciding whether to apply the death penalty. The Court noted that adolescents are less mature, responsible, and self-disciplined than adults and are less able to consider the long-range implications of their actions.

In *Thompson v. Oklahoma* (1988), the issue before the Supreme Court was whether imposing the death penalty on a juvenile murderer, who was only 15 years old at the time of the offense, violated constitutional protection against cruel and unusual punishment. In an opinion by Justice Stevens, four justices concluded that the Eighth Amendment prohibited application of the death penalty to a person who was younger than 16 at the time of the crime. Justice O'Connor concurred with the opinion, but on the narrower grounds that no minimum age was specified in the State's capital punishment provisions. A year later the Court decided in *Stanford v. Kentucky* that the Eighth Amendment does not prohibit the death penalty for crimes committed at ages 16 or 17.

Youth under age 18 account for a small proportion of those receiving the death penalty

Between 1973 and 1993, 121 death sentences were handed down to youth who were under age 18 at the time of their crime, accounting for about 2% of the total number of death sentences imposed since 1973. In the years prior to 1987, as many as 7% of death sentences involved youth younger than 18 at the time of their crime. The proportion dropped from 1987 through 1989 presumably because of cases pending before the Supreme Court.

Most juvenile death sentences are eventually reversed

As with most death sentences, a large proportion of the death sentences imposed for crimes committed at age 17 or younger are reversed. Since 1973, 66% of these "juvenile" death sentences have been reversed, 7% have resulted in executions, and 27% are still in force.²

²Snyder, Sickmund, and Poe-Yamagata, *Juvenile Offenders and Victims*, 179.

The Tangled Web

Read the following case study and follow your teacher's instructions.

Jerry was an angry seventeen-year-old high school junior. Nothing ever seemed to go his way. He often told his friends that he hated going to school and that the teachers always picked on him. Some of his friends agreed with him, but some of them told him that he had the wrong attitude. They told him he was nearly an adult and should grow up.

Jerry lived with his mother, and she tried to make him follow her rules and behave in school. However, she was unable to keep him under control. He already had a long juvenile record and had been in and out of detention since he was ten years old. He was often suspended from school for violent fights.

Jerry and his best friend Josh, 15, had been in and out of trouble since elementary school. One afternoon they were bored. Jerry decided that he would make a little excitement and took his mother's car, even though he was grounded. He pulled up in front of the supermarket and reached under the car seat. To Josh's surprise, Jerry pulled out a pistol.

At first, Josh was reluctant to go along with Jerry's idea. Finally, Jerry persuaded him that the pistol was just to scare the clerk into handing over the cash from the safe. Then they would race out of there, hide the money, and return home without anyone being the wiser. Josh agreed and put on a ski mask, just as Jerry had done.

The boys entered the supermarket and headed quickly for the office, where they found the head clerk counting money. They demanded that she put the money in a bag and give it to them. No one seemed to notice what was going on until she handed the boys the bag. Then a customer saw the gun and began to scream.

Noticing that the boys were distracted, the clerk tried to signal the security guard. Jerry was angry—he had told her not to try anything! He turned toward her and fired. The clerk fell to the floor while Jerry and Josh began to run. They made it to the car and got a few blocks away before they were intercepted by the police. The boys were taken to juvenile hall and booked for robbery with a gun and murder in the first degree—the clerk died.